

AMENDED IN ASSEMBLY APRIL 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2417**

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**Introduced by Assembly Member Block**

February 24, 2012

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An act to ~~amend Sections 44949 and 44955~~ *add and repeal Section 44949.1* of the Education Code, relating to school employees, ~~and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2417, as amended, Block. San Diego Unified School District: certificated school employees: layoff: notice.

Existing law requires specified school district officials to give a preliminary notice to the governing board and certificated employees when it is recommended that a notice be given to employees that their services are to be terminated pursuant to a reduction in the workforce for the next school year and the reasons for that reduction. Existing law requires that this preliminary notice be given by March 15. Existing law requires the final notice that an employee's services will be terminated for the next year pursuant to a reduction in the workforce to be given to the employee by May 15.

This bill would extend the deadlines for the notices described above for ~~the 2011–12 fiscal year~~ *2013* for the San Diego Unified School District to June ~~15~~ *1* and August ~~15~~ *1*, respectively. ~~The bill would also make a conforming change and technical, nonsubstantive changes.~~

This bill would make legislative findings and declarations as to the necessity of a special statute for the San Diego Unified School District.

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote:  $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) According to the San Diego Unified School District, the  
4 May revision of the proposed budget and the annual Budget Act  
5 provide more predictive information for purposes of the district's  
6 budgetary and personnel decisions than the January budget  
7 proposed by the Governor. The San Diego Unified School District  
8 expects this to be the case again this year.

9 (b) Existing law requires school districts to issue preliminary  
10 reduction in force notices by March 15 and final reduction in force  
11 notices by May 15 of each year.

12 (c) As a result of this law and in order to guarantee that it will  
13 remain fiscally solvent, for the past five years, the San Diego  
14 Unified School District has relied on the January budget proposed  
15 by the Governor to determine the number of layoff notices that it  
16 must give to its employees. This results in hundreds of teachers  
17 receiving notices that are later rescinded when more accurate  
18 information is available in May when the proposed budget is  
19 revised and later when the annual Budget Act is enacted.

20 (d) Given the evidence that the existing statutory deadlines hurt  
21 its schools, the San Diego Unified School District and the  
22 bargaining unit of its certificated employees have determined that  
23 ~~for the 2011–12 fiscal year~~ it will be more productive for the  
24 schools, pupils, and teachers of the district if the deadlines for  
25 giving notice to certificated employees that the school district may  
26 terminate their services are extended by three months.

27 ~~(e) Because of its particular circumstances, the San Diego~~  
28 ~~Unified School District and the bargaining unit of its certificated~~  
29 ~~employees anticipate that this act will result in fewer layoffs and~~  
30 ~~greater stability for the district's pupils and schools.~~

31 SEC. 2. Section 44949.1 is added to the Education Code, to  
32 read:

33 44949.1. (a) Notwithstanding Section 44949 and any other  
34 law, for 2013 for the San Diego Unified School District, the March  
35 15 deadline specified in subdivision (a) of Section 44949 shall be

1 *extended to June 1, and the May 7 deadline specified in subdivision*  
2 *(c) of Section 44949 shall be extended to July 24.*

3 *(b) Notwithstanding Section 44955 and any other law, for 2013*  
4 *for the San Diego Unified School District the May 15 deadline*  
5 *specified in subdivision (c) of Section 44955 shall be extended to*  
6 *August 1.*

7 *(c) This section shall remain in effect only until January 1, 2014,*  
8 *and as of that date is repealed, unless a later enacted statute, that*  
9 *is enacted before January 1, 2014, deletes or extends that date.*

10 SEC. 2. ~~Section 44949 of the Education Code is amended to~~  
11 ~~read:~~

12 ~~44949. (a) (1) (A) No later than March 15 and before an~~  
13 ~~employee is given notice by the governing board that his or her~~  
14 ~~services will not be required for the next school year for the reasons~~  
15 ~~specified in Section 44955, the governing board and the employee~~  
16 ~~shall be given written notice by the superintendent of the district~~  
17 ~~or his or her designee, or in the case of a district that has no~~  
18 ~~superintendent by the clerk or secretary of the governing board,~~  
19 ~~that it has been recommended that the notice be given to the~~  
20 ~~employee, and stating the reasons for that notice.~~

21 ~~(B) Notwithstanding subparagraph (A), subdivision (c), and any~~  
22 ~~other law, for the 2011-12 fiscal year the deadline specified in~~  
23 ~~subparagraph (A) shall be extended to June 15 for the San Diego~~  
24 ~~Unified School District and the deadline specified in subdivision~~  
25 ~~(c) shall be extended to August 7.~~

26 ~~(2) Until the employee has requested a hearing as provided in~~  
27 ~~subdivision (b) or has waived his or her right to a hearing, the~~  
28 ~~notice and the reasons therefor shall be confidential and shall not~~  
29 ~~be divulged by any person, except as may be necessary in the~~  
30 ~~performance of duties. The violation of this requirement of~~  
31 ~~confidentiality, in and of itself, shall not in any manner be~~  
32 ~~construed as affecting the validity of any hearing conducted~~  
33 ~~pursuant to this section.~~

34 ~~(b) The employee may request a hearing to determine if there~~  
35 ~~is cause for not reemploying him or her for the next school year.~~  
36 ~~A request for a hearing shall be in writing and shall be delivered~~  
37 ~~to the person who sent the notice pursuant to subdivision (a), on~~  
38 ~~or before a date specified in that subdivision, which shall not be~~  
39 ~~less than seven days after the date on which the notice is served~~  
40 ~~upon the employee. If an employee fails to request a hearing on~~

1 or before the date specified, his or her failure to do so shall  
2 constitute his or her waiver of his or her right to a hearing. The  
3 notice provided for in subdivision (a) shall advise the employee  
4 of the provisions of this subdivision.

5 (e) If a hearing is requested by the employee, the proceeding  
6 shall be conducted and a decision made in accordance with Chapter  
7 5 (commencing with Section 11500) of Part 1 of Division 3 of  
8 Title 2 of the Government Code, and the governing board shall  
9 have all the power granted to an agency in that chapter, except that  
10 all of the following shall apply:

11 (1) The respondent shall file his or her notice of defense, if any,  
12 within five days after service upon him or her of the accusation,  
13 and he or she shall be notified of this five-day period for filing in  
14 the accusation.

15 (2) The discovery authorized by Section 11507.6 of the  
16 Government Code shall be available only if request is made  
17 therefor within 15 days after service of the accusation, and the  
18 notice required by Section 11505 of the Government Code shall  
19 so indicate.

20 (3) The hearing shall be conducted by an administrative law  
21 judge who shall prepare a proposed decision, containing findings  
22 of fact and a determination as to whether the charges sustained by  
23 the evidence are related to the welfare of the schools and the pupils  
24 of the schools. The proposed decision shall be prepared for the  
25 governing board and shall contain a determination as to the  
26 sufficiency of the cause and a recommendation as to disposition.  
27 The governing board shall make the final determination as to the  
28 sufficiency of the cause and disposition. None of the findings,  
29 recommendations, or determinations contained in the proposed  
30 decision prepared by the administrative law judge shall be binding  
31 on the governing board. Nonsubstantive procedural errors  
32 committed by the school district or governing board of the school  
33 district shall not constitute cause for dismissing the charges unless  
34 the errors are prejudicial errors. Copies of the proposed decision  
35 shall be submitted to the governing board and to the employee on  
36 or before May 7 of the year in which the proceeding is commenced.  
37 All expenses of the hearing, including the cost of the administrative  
38 law judge, shall be paid by the governing board from the district  
39 funds.

1   ~~The governing board may adopt from time to time such rules~~  
2   ~~and procedures not inconsistent with provisions of this section as~~  
3   ~~may be necessary to effectuate this section.~~

4   ~~(d) Any notice or request shall be deemed sufficient when it is~~  
5   ~~delivered in person to the employee to whom it is directed, or when~~  
6   ~~it is deposited in the United States registered mail, postage prepaid~~  
7   ~~and addressed to the last known address of the employee.~~

8   ~~(e) If after request for hearing pursuant to subdivision (b) any~~  
9   ~~continuance is granted pursuant to Section 11524 of the~~  
10   ~~Government Code, the dates prescribed in subdivision (e) which~~  
11   ~~occur on or after the date of granting the continuance and the date~~  
12   ~~prescribed in subdivision (e) of Section 44955 which occurs after~~  
13   ~~the date of granting the continuance shall be extended for a period~~  
14   ~~of time equal to the continuance.~~

15   ~~SEC. 3. Section 44955 of the Education Code is amended to~~  
16   ~~read:~~

17   ~~44955. (a) A permanent employee shall not be deprived of his~~  
18   ~~or her position for causes other than those specified in Sections~~  
19   ~~44907 and 44923, and Sections 44932 to 44947, inclusive, and a~~  
20   ~~probationary employee shall not be deprived of his or her position~~  
21   ~~for cause other than as specified in Sections 44948 to 44949,~~  
22   ~~inclusive.~~

23   ~~(b) (1) If in any school year the average daily attendance in all~~  
24   ~~of the schools of a district for the first six months in which school~~  
25   ~~is in session shall have declined below the corresponding period~~  
26   ~~of either of the previous two school years, if the governing board~~  
27   ~~determines that attendance in a district will decline in the next~~  
28   ~~school year as a result of the termination of an interdistrict tuition~~  
29   ~~agreement as defined in Section 46304, if a particular kind of~~  
30   ~~service is to be reduced or discontinued not later than the beginning~~  
31   ~~of the next school year, or if the amendment of state law requires~~  
32   ~~the modification of curriculum, and if in the opinion of the~~  
33   ~~governing board of the district it shall have become necessary by~~  
34   ~~reason of any of these conditions to decrease the number of~~  
35   ~~permanent employees in the district, the governing board may~~  
36   ~~terminate the services of not more than a corresponding percentage~~  
37   ~~of the certificated employees of the district, permanent as well as~~  
38   ~~probationary, at the close of the school year. Except as otherwise~~  
39   ~~provided by law, the services of a permanent employee shall not~~  
40   ~~be terminated under this section while any probationary employee,~~

1 or any other employee with less seniority, is retained to render a  
2 service that the permanent employee is certificated and competent  
3 to render.

4 (2) ~~In computing a decline in average daily attendance for~~  
5 ~~purposes of this section for a newly formed or reorganized school~~  
6 ~~district, each school of the district shall be deemed to have been~~  
7 ~~a school of the newly formed or reorganized district for both of~~  
8 ~~the two previous school years.~~

9 (3) ~~As between employees who first rendered paid service to~~  
10 ~~the district on the same date, the governing board shall determine~~  
11 ~~the order of termination solely on the basis of needs of the district~~  
12 ~~and the pupils of the district. Upon the request of any employee~~  
13 ~~whose order of termination is so determined, the governing board~~  
14 ~~shall furnish in writing no later than five days before the~~  
15 ~~commencement of the hearing held in accordance with Section~~  
16 ~~44949, a statement of the specific criteria used in determining the~~  
17 ~~order of termination and the application of the criteria in ranking~~  
18 ~~each employee relative to the other employees in the group. This~~  
19 ~~requirement that the governing board provide, on request, a written~~  
20 ~~statement of reasons for determining the order of termination shall~~  
21 ~~not be interpreted to give affected employees any legal right or~~  
22 ~~interest that would not exist without such a requirement.~~

23 (e) (1) (A) ~~Notice of termination of services shall be given~~  
24 ~~before the 15th of May in the manner prescribed in Section 44949,~~  
25 ~~and services of these employees shall be terminated in the inverse~~  
26 ~~of the order in which they were employed, as determined by the~~  
27 ~~governing board in accordance with the provisions of Sections~~  
28 ~~44844 and 44845. If a permanent or probationary employee is not~~  
29 ~~given the notices and a right to a hearing as provided for in Section~~  
30 ~~44949, he or she shall be deemed reemployed for the next school~~  
31 ~~year.~~

32 (B) ~~Notwithstanding subparagraph (A) and any other law, for~~  
33 ~~the 2011-12 fiscal year, the San Diego Unified School District~~  
34 ~~shall give the notice of termination of services before August 15.~~

35 (2) ~~The governing board shall make assignments and~~  
36 ~~reassignments in a manner that employees shall be retained to~~  
37 ~~render any service that their seniority and qualifications entitle~~  
38 ~~them to render. Before assigning or reassigning any certificated~~  
39 ~~employee to teach a subject that he or she has not previously taught,~~  
40 ~~and for which he or she does not have a teaching credential or that~~

1 is not within the employee's major area of postsecondary study or  
2 the equivalent thereof, the governing board shall require the  
3 employee to pass a subject matter competency test in the  
4 appropriate subject.

5 (d) Notwithstanding subdivision (b), a school district may  
6 deviate from terminating a certificated employee in order of  
7 seniority for either of the following reasons:

8 (1) The district demonstrates a specific need for personnel to  
9 teach a specific course or course of study, or to provide services  
10 authorized by a services credential with a specialization in either  
11 pupil personnel services or health for a school nurse, and that the  
12 certificated employee has special training and experience necessary  
13 to teach that course or course of study or to provide those services,  
14 which others with more seniority do not possess.

15 (2) For purposes of maintaining or achieving compliance with  
16 constitutional requirements related to equal protection of the laws.

17 ~~SEC. 4.~~

18 *SEC. 3.* The Legislature finds and declares that a special law  
19 is necessary and that a general law cannot be made applicable  
20 within the meaning of Section 16 of Article IV of the California  
21 Constitution because of the unique situation of the San Diego  
22 Unified School District, as described in Section 1 of this act.

23 ~~SEC. 5.~~ This act is an urgency statute necessary for the  
24 immediate preservation of the public peace, health, or safety within  
25 the meaning of Article IV of the Constitution and shall go into  
26 immediate effect. The facts constituting the necessity are:

27 In order to allow the San Diego Unified School District to make  
28 more informed budgetary and personnel decisions by extending  
29 for the 2011–12 fiscal year the deadlines for the notice given by  
30 the San Diego Unified School District to its certificated employees  
31 in anticipation of the termination of employee services, it is  
32 necessary that this act take effect immediately.